

CONSENT DECREE

I. Introduction

1. This consent decree is entered into by the Enforcement Bureau of the Federal Communications Commission (“Bureau”) and AT&T Wireless Services, Inc. (“AWS”), terminating an informal Bureau investigation into AWS’s compliance with the spectrum aggregation limit contained in Section 20.6 of the Commission’s rules.¹

II. Background

2. For various periods of time beginning in 2000 and continuing during the past 12 months, AWS had an attributable interest in spectrum in excess of the limit imposed by Section 20.6 of the Commission’s rules in certain counties in the following 11 basic trading areas (“BTAs”) for the stated periods of time, (a) in two BTAs (Louisville, KY; and Bowling Green, KY) for a period of nearly 20 months (from February 25, 2000, to October 19, 2001); and (b) in one BTA (Beaumont, TX) continuously since April 7, 2000; and (c) in eight BTAs (Dalton, GA; Madisonville, KY; Owensboro, KY; Natchez, MS; Rome, GA; Somerset, KY; Tupelo-Corinth, MS; and Corbin, KY) for a period of nearly 10 months (from December 26, 2000, to October 19, 2001).

3. The overages resulted from three separate transactions or series of transactions, including (a) a February 25, 2000 transaction involving American Cellular Corporation, (b) an April 7, 2000 *pro forma* reorganization of TeleCorp Holding Corp., Inc., and (c) a series of transactions occurring on December 26, 2000, December 28, 2000 and September 26, 2001 involving Cascade Wireless, L.L.C, ABC Wireless, LLC, and Tritel C/F Holding Corp.

4. In late August or early September 2001, research conducted by staff of the Wireless Telecommunications Bureau (“WTB”) raised questions about AWS’s compliance with Section 20.6 of the Commission’s rules in at least one geographic area. WTB notified AWS and requested additional information. In subsequent teleconferences and face-to-face meetings with WTB staff, AWS confirmed the existence of Section 20.6 compliance problems in multiple geographic areas.

5. On October 19, 2001, AWS filed applications seeking Commission consent to the divestiture of certain spectrum attributable to AWS in certain counties in 10 BTAs in which AWS had exceeded the spectrum cap limits.² Those applications were granted on February 12, 2002.³ On June 21, 2002, AWS filed an application seeking Commission consent to the divestiture of

¹ 47 C.F.R. § 20.6.

² See Public Notice, TeleCorp PCS, Inc. and AT&T Wireless Services, Inc. Seek FCC Consent To Transfer Control of Licenses, WT Dkt. No. 01-315, DA 01-2608 (November 8, 2001); see also Applications for Assignments of Authorization and Transfer of Control, WTB File Nos. 0000634714 (BTA102, BTA384), 0000634728 (BTA315, BTA449), 0000634722 (BTA052, BTA098, BTA263, BTA273, BTA338, BTA423) (October 19, 2001).

³ See Public Notice, Wireless Telecommunications Bureau and international Bureau Grant Consent for Transfer of Control or assignment of Licenses from TeleCorp PCS, Inc. to AT&T Wireless Services, Inc., at 4-5 (February 12, 2002).

spectrum in the Beaumont, TX BTA.⁴

6. On December 20, 2001, WTB referred this matter to the Enforcement Bureau for investigation. On January 30, 2002, in response to a Bureau request, AWS submitted a Spectrum Cap Report to the Enforcement Bureau, documenting the attribution of spectrum to AWS in excess of the Commission's aggregation limits.

III. Definitions

7. For the purposes of this Consent Decree the following definitions shall apply:

- (a) "Commission" or "FCC" means the Federal Communications Commission.
- (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- (c) "WTB" means the Wireless Telecommunications Bureau of the Federal Communications Commission.
- (d) "AWS" means AT&T Wireless Services, Inc. and any subsidiaries.
- (e) "Parties" means AWS and the Bureau.
- (f) "Adopting Order" means an Order of the Bureau adopting the terms and conditions of this Consent Decree.
- (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (h) "Investigation" means the investigation initiated by the Bureau after referral from WTB on December 20, 2001 regarding AWS's compliance with 47 C.F.R. § 20.6.

IV. Agreement

8. AWS agrees that the Bureau has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

9. AWS agrees that it shall make a voluntary contribution to the United States Treasury in the amount of \$150,000 (one hundred fifty thousand dollars) within ten calendar days of the date on which the Adopting Order is released.

10. AWS agrees to implement, within 20 calendar days after the Bureau releases the Adopting Order, an internal Compliance Plan, a summary of which is attached hereto and incorporated by reference, to ensure AWS's future compliance with the Commission's spectrum cap rules. AWS's obligations under the Compliance Plan shall continue for so long as the Commission's spectrum cap rules remain in place.

⁴ Assignment Application, TeleCorp Holding Corp. II, LLC and David Michelman, Trustee, Beaumont-Port Arthur BTA, File No. 0000934411 (filed June 21, 2002).

11. In express reliance upon the covenants and representations contained in this Consent Decree, the Bureau agrees to terminate its Investigation into the matters discussed in paragraphs 2-6, above, without any finding of liability on the part of AWS.

12. The Bureau agrees that, based on the facts developed in this Investigation and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the effective date of the Consent Decree or the existence of this Consent Decree to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against AWS concerning the matters that were the subject of the Investigation. The Bureau also agrees that, based on the facts developed in the Investigation, and in the absence of material new evidence related to this matter, it will not use the facts developed in this Investigation through the effective date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against AWS with respect to its basic qualifications, including its character qualifications, to be a Commission licensee or with respect to compliance with the Commission's rules and policies.

13. Nothing in this Consent Decree shall prevent the Commission from adjudicating complaints filed pursuant to section 208 of the Communications Act, as amended, 47 U.S.C. § 208, against AWS or its affiliates for alleged violations of Section 20.6 of the Commission's rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the Commission's adjudication of that complaint will be based solely on the record developed in that proceeding. Nothing in this Consent Decree shall prevent the Commission from instituting new investigations or enforcement proceedings against AWS pursuant to sections 4(i), 403 and 503 of the Communications Act in the event of any alleged future misconduct.

14. In the event that AWS is found by the Commission or its delegated authority to have engaged in a violation of Section 20.6 of the Commission's rules subsequent to the release of the Adopting Order, AWS agrees that the conduct described in paragraphs 2 - 6 above, may be considered by the Commission or its delegated authority in determining an appropriate sanction.

15. AWS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts the Consent Decree without change, addition, or modification.

16. AWS waives any rights it may have under any provision of the Equal Access to Justice Act, 5 U.S.C. § 504.

17. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

18. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AWS nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AWS and the Commission will waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

19. The Bureau and AWS agree that this Consent Decree does not constitute either an

adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Commission's rules, including Section 20.6. The parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, AWS does not admit or deny any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.

20. AWS agrees that any violation of the Consent Decree or the Adopting Order will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

21. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau
Federal Communications Commission

For AT&T Wireless Services

David H. Solomon
Chief

Douglas I. Brandon
Vice President

Date

Date

**SUMMARY OF
SPECTRUM CAP COMPLIANCE PLAN OF
AT&T WIRELESS SERVICES, INC.**

To better ensure compliance with the spectrum cap requirements set forth in Section 20.6 of the Commission's Rules, AT&T Wireless Services, Inc. ("AWS") will establish a formal compliance program that will continue for as long as the spectrum cap rule remains in place. The Compliance Program will consist of the following:

1. Within twenty (20) days after the Bureau adopts an order approving the Consent Decree, AWS will appoint a Spectrum Cap Compliance Officer ("Officer"), who will, on a continuing basis, administer the spectrum cap compliance program set forth herein.
2. Within thirty (30) days of appointment, the Officer will establish and maintain a database of all active licenses held by AWS and related information (including market designation and amount of spectrum held), and shall review this database at least every thirty (30) days to ensure it is kept up to date.
3. Within thirty (30) days of appointment, the Officer will implement an education program for a targeted audience of company personnel who are involved in mergers, acquisitions, divestitures, and other transactions involving FCC licenses subject to the spectrum cap. This education program will include development of an on-line advisory about the spectrum cap rule, including the associated attribution rules, and a list of all companies in which AWS has an attributable interest for purposes of the spectrum cap.
4. Upon appointment of the Officer, AWS will institute a requirement that company personnel involved in mergers, acquisitions, divestitures, and other transactions involving FCC licenses subject to the spectrum cap confer with the Officer or another employee designated by the Officer before completing such transactions.
5. Within thirty (30) days of appointment, the Officer will use his or her best efforts to obtain a list of all active licenses held by entities in which AWS has an attributable interest for spectrum cap purposes and related information (including market designation and amount of spectrum held), and add that information to the database described above. The Officer will also use his or her best efforts to ensure that these entities keep AWS advised of any relevant changes to the information provided.
6. Within thirty (30) days of appointment of the Officer, AWS will send a notice to all entities in which AWS has an attributable interest for spectrum cap purposes alerting them to the need to advise AWS in writing before entering into transactions involving FCC licenses subject to the spectrum cap. The notice will further state that the companies must provide sufficient time for AWS to review the relevant documentation, and for a restructuring of the transaction in the event that AWS determines that the transaction will result in a violation of spectrum cap rule.
7. AWS will provide written notice by hand delivery and facsimile to the Chief, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room 7-C723, Washington, DC, 20554, facsimile (202) 418-2810 within ten (10) days of the discovery of any AWS spectrum attribution interest in excess of the spectrum aggregations limit contained in Section 20.6 of the Commission's rules.